

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

**S.A. Corp., d/b/a/ Vacuums Unlimited d/b/a
Go Vacuum, and Chander Anand,**

Plaintiffs,

v.

Hartford Casualty Insurance Company,

Defendant.

Case No. 1:15-cv-00071-GBL-MSN

JOINT PROPOSED DISCOVERY PLAN

Plaintiffs S.A. Corp. and Chander Anand (collectively, the “Plaintiffs” or “S.A. and Anand”) and Defendant Hartford Casualty Insurance Company (the “Defendant” or “Hartford” and, together with the Plaintiffs, the “Parties”) file their Joint Proposed Discovery Plan pursuant to Fed. R. Civ. P. 26(f), Local Rule 26 and the Court’s Order setting the Fed. R. Civ. P. 16(b) Pretrial Conference (Dkt. No. 17).

A. Nature of Case and Basis of Claims and Defenses.

This is an insurance coverage action in which S.A. and Anand demand that Hartford defend them in an underlying action entitled *Envirocare Technologies, LLC v. Vacuums Unlimited, Inc. et al.*, Case No. 2:14-cv-06501 (E.D.N.Y.) (the “Envirocare Action”). Plaintiffs seek coverage under policies which Hartford issued to S.A. Corp. for four consecutive annual policy periods from May 10, 2011 to May 10, 2015 (the “Policies”). Hartford denies that any coverage exists.

B. Pending Motions

Plaintiffs served their First Amended Complaint (Dkt. No. 4) on February 13, 2015. Plaintiffs filed their Motion for Partial Summary Judgment (Dkt. No. 5) on February 17, 2015, and Defendant filed its Motion to Dismiss Under Rule 12(b)(6) or, in the Alternative, for Summary Judgment (Dkt. No. 11) on February 24, 2015. Plaintiffs' reply in support of their motion and Defendant's reply in support of its motion are due March 12, 2015. Both motions have been set for hearing on April 24, 2015.

C. Discovery Plan

The Parties agree that no discovery is necessary until after the Court rules on the pending motions, which may be decided on the basis of the policy language and the underlying complaint. *See Copp v. Nationwide Mut. Ins. Co.*, 692 S.E.2d 220, 224 (Va. 2010) (insurer's duty to defend governed by "eight corners" rule, under which courts only look to (1) the four corners of the policy and (2) the four corners of the underlying complaint).

If the Court finds a duty to defend exists, the duty to indemnify is not ripe for resolution while the Envirocare Action is pending. *See Penn-Am. Ins. Co. v. Mapp*, 461 F. Supp. 2d 442, 458 (E.D. Va. 2006), *appeal dismissed* 521 F.3d 290 (4th Cir. 2008) ("It is only when there is no duty to defend based on [the underlying] factual allegations that a reviewing court on a declaratory judgment action can make a factual determination that there is no duty to indemnify prior to a decision upon the merits of the underlying claim."). Accordingly, the parties propose staying discovery in this action until either (1) resolution of the pending dispositive motions finding no duty to defend exists, in which case no further proceedings will be necessary, or (2) in the event that the Court determines a duty to defend exists, entry of a final order in the Envirocare Action.

Respectfully submitted, this 11th day of March, 2015.

/s/ John J. Rasmussen

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